

# **The Zoning Ordinance for the Town of Fountain Hills**

## **Chapter 4**

### **NONCONFORMING USES AND STRUCTURES**

#### **Sections:**

#### **4.01 Nonconforming Uses and Structures.**

##### **Section 4.01 Nonconforming Uses and Structures.**

- A. Purpose.** The purpose of this chapter is to regulate the use, maintenance, alteration, repair, extension and restoration of buildings and land which lawfully existed at the time of adoption of this ordinance, but which do not conform to the regulations for the district in which they are located.
- B. Definitions.**
1. A "nonconforming use" is a use of a structure or land which was lawfully established and maintained prior to the adoption of this ordinance but which, under this ordinance, does not conform to the use regulations for the district in which it is located.
  2. A "nonconforming structure" is a structure which was lawfully erected prior to the adoption of this ordinance but which, under this ordinance, does not conform with the standards of coverage, yard spaces, height of structures or distance between structures prescribed in the regulations for the district in which the structure is located.
- C. Continued Use.**
1. The lawful use of land, building or structure existing at the time of the passage of this ordinance, although such use does not conform to the provisions hereof for said land, may be continued, but if such nonconforming use is discontinued for a period of twelve (12) months, it shall be considered abandoned, and future use of said land or structure shall be in conformity with the provisions of this ordinance.
  2. Nothing in this Chapter shall prevent the reconstruction, repairing, or rebuilding of a nonconforming structure or part thereof rendered necessary by normal wear and tear, deterioration, or depreciation, provided such wear and tear, deterioration, or depreciation does not exceed fifty (50) percent of the value of said structure as determined by three (3) competent appraisers. The services of the three (3) appraisers shall be retained by the owner of the building or structure after the three (3) appraisers are mutually agreed upon by the Town and the owner of the building or structure.
  3. Nothing in this ordinance shall be interpreted as authorization for approval of the continuance of the use of a building or premises in violation of regulations in effect at the time of the effective date of this ordinance.

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4. Nothing in this ordinance shall prevent requiring the strengthening or restoring to a safe condition of any portion of a structure declared unsafe by a proper authority.
5. Nothing in this ordinance shall require any change in plans, construction, or designated use of a building for which a building permit has been issued prior to the enactment of this ordinance, provided the construction shall be diligently pursued within sixty (60) days of the effective date of this ordinance, and the building is completed and used according to such plans as filed within one (1) year from the date of this ordinance.
6. A nonconforming building or portion thereof which was specifically designed, or beyond a reasonable doubt, intended by the nature of its arrangement and construction to be used in any way which would be nonconforming under this ordinance, but was not so used at the time this ordinance became effective, may, if not altered or repaired as prohibited elsewhere in this ordinance, be occupied or used for the purpose for which it was designed, arranged, or intended provided such building is so used within twelve (12) months after the effective date of this ordinance. Otherwise, the use of such building shall conform to the provisions of this ordinance.

### **D. Reconstruction.**

When any nonconforming use or structure is dismantled or damaged by fire, explosion, collapse, act of God, act of the owner, or act of public enemy to the extent of greater than fifty (50) percent of its reconstruction or replacement value, as determined by three (3) competent appraisers, then the said structure and the use of the land shall conform to all regulations for the zoning district in which said structure and land is located. The services of the three (3) appraisers shall be retained by the owner of the building or structure after the three (3) appraisers are mutually agreed upon by the Town and the owner of the building or structure.

### **E. Extensions.**

1. Any extension of a nonconforming structure shall conform with all regulations for the zoning district in which such structure is located.
2. All changes to distinguishing traits or primary features of the use of a building or land as evidenced by increased parking requirements, change of occupancy, change of outside storage, or other features, occurring to existing properties after the effective date of this Zoning Ordinance, shall be subject to all of the provisions of this Zoning Ordinance.
3. Any extension of a nonconforming use shall be by special use permit issued by the Town Council subject to the following limitations:
  - a. The extension of a lawful use to any portion of an existing nonconforming building shall not be deemed the extension of a nonconforming use.
  - b. No nonconforming use shall be extended to displace a conforming use.
  - c. A nonconforming use of a building or lot shall not be changed to another nonconforming use whatsoever. Changes in use shall be made only to a conforming use.

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- d. Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use.

### **F. Parking.**

- 1. If a building or business is damaged (less than fifty (50) percent), and if it is allowed to be reconstructed subject to the provision of subsection 4.01 (C)(2) of this section, it shall be required to provide only the number of parking spaces which existed prior to the destruction.
- 2. If a business expands, it shall, in addition to the parking spaces in existence prior to such expansion, be required to provide only the number of additional parking spaces necessitated by the expansion.

### **G. Rezoning and Annexation.**

Whenever the boundaries of a zone shall be changed so as to transfer an area from one zone to another zone of a different classification, or for areas annexed into the Town of Fountain Hills, the foregoing provisions shall also apply to any nonconforming uses existing therein.